REMARKS

This Amendment is in response to the Office Action dated June 29, 2010. Applicant respectfully requests reconsideration and allowance of all pending claims in view of the following remarks.

I.   <u>CLAIM REJECTIONS – 35 USC §102</u>

Claims 17-31 were rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Moles et al., U.S. Publication No. 2002/0072359 ("Moles").

A.   **Position of the Examiner**

Applicant's previous amendment added the following step to claim 17:

"analyzing the transmitted data representative of said at least one operation by the remote analysis device."

The Examiner believes that amended claim 1 is anticipated by the following paragraph of Moles et al.,

> [0067] OTAMD server 160 receives the diagnostic testing request message from MS 112 and builds MS 112 diagnostics testing file 330. OTAMD server 160 uses manufacturer and model identification information <u>included</u> in the diagnostic testing request message transmitted by MS 112 <u>to determine the correct interpreted bytecode application program 331 and diagnostics data file 332 to include in MS 112 diagnostics testing file 330</u> (process step 510). Next, **MS 112 diagnostics testing file 330 is transmitted to MS 112 as TCP/IP packets via Internet 165** or as a SMS message via SMS gateway 180 (process step 515). (Emphasis added)

Applicants respectfully disagree.

B.   **Applicants' Position**

1.   Summary of Moles et al.

Moles et al. disclose a method as well as a device which enable a diagnostic to be established and then correction of a fault within a radiocommunication terminal.

The technique disclosed in Moles et al. is based on three main steps. The first step is linked to the detection of a fault within the radiocommunication terminal and the transmission of a request to perform a test sent by the radiocommunication terminal to a remote diagnostic server. The second step (performed by the server) is related to the identification/choice of a specific test in accordance with the received request and the transmission of a diagnostic program to the radiocommuncation terminal. The third step is related to the reception and the execution of the diagnostic program by the radiocommunication terminal.

Applicant notes that the remote diagnostic server comprises a memory (310, para. [0055]) where the diagnostic programs are stored. Those programs are designed as a function of information comprised within the request sent by the radiocommunication terminal (such as the manufacturer name, the type of the mobile phone, (cf. para. [0067], etc.)

2.   Novelty of the pending claim 17 in view of Moles et al.

Concerning the pending claim 17, the following chart sums up the position of the Examiner:

Essential characteristics in claim 17	Corresponding elements in the document HERLE (according to the Examiner)
A method for analysing the operation of a radiocommunication terminal according to a predetermined radiocommunication protocol, the method comprising the following steps:	*See [0018]: " it is a primary object of the present invention to provide a mobile station diagnostic testing system for use in a wireless network"*
receiving by said radiocommunication terminal an analysis scenario and/or analysis parameter;	*See [0018]: " transmitting **the mobile station diagnostic testing file (330)** to the first mobile station (**MS**) "*
transmitting from said radiocommunication terminal data representative of at least one operation to be analysed to a remote analysis device, via a connection according to said predetermined radiocommunication protocol,	*See [0028]: "transmitting to the wireless network a **reverse channel notification message** notifying the wireless network that **a fault has been detected in the mobile station**, wherein receipt of the reverse*

subsequent to said step of receiving ; and	*channel notification message is capable of causing the wireless network to* **transmit the mobile station diagnostic testing file to the mobile station (330).* "*
analysing of the transmitted data representative of said at least one operation by the remote analysis device.	***See [0067]:** " OTAMD server 160 <u>receives the diagnostic testing request message</u> from MS 112 and builds MS 112 diagnostics testing file 330. OTAMD server 160 <u>uses manufacturer and model identification information included in the diagnostic testing request message</u> transmitted by MS 112 to determine the correct interpreted bytecode application program 331 and diagnostics data file 332 to include in MS 112 <u>diagnostics testing file 330</u>"*

Therefore, it appears that the way the Examiner quotes the relevant paragraphs (according to him) is inconsistent from a temporal point of view.

Indeed, paragraphs **[0028]** and **[0067]** describe <u>**several ways to generate a diagnostics testing file 330**</u> :

- in paragraph **[0028]** (corresponding to the technical characteristics of the claim 11 in Moles et al.), the mobile station (MS) sends a message signaling the detection of an error (as, for example, the detection of an internal fault as mentioned in the step **505** and in paragraph **[0066]** of Moles et al., " *...detect an internal fault in the MS.*" The remote server then generates, when it receives this message of error, a <u>**diagnostics testing file (330)**</u>.

- in paragraph **[0067]**, the mobile station (MS) sends a request for obtaining a diagnostic (said request comprises, for example the identity of the mobile station), The remote server generates, when it receives this message of request, a <u>**diagnostics testing file (330)**</u>.

But it is this <u>**diagnostics testing file (330)**</u> which is received in the step of receiving (in the pending claim 17) according to the Examiner.

Hence, there is a chronologic inconsistency : the **<u>diagnostics testing file (330) cannot be received as it has not yet been generated.</u>**

In other words, it clearly appears that the steps described in the paragraphs **[0028], [0067]** cannot follow a step of receiving and executing a diagnostics testing file (330).

Accordingly, Moles et al. does not anticipate the invention recited in Applicants' independent claim 17. The same argument applies to independent claim 31. The rest of the claims are also patentable in virtue of their dependency from pending claim 17.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: /David D. Brush/
   David D. Brush, Reg. No. 34,557
   900 Second Avenue South, Suite 1400
   Minneapolis, Minnesota 55402-3319
DDB: Phone: (612) 334-3222 Fax: (612) 334-3312